

Message Text

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E.O. 11652: N/A
SUBJECT: SHUM CI UN
SUBJECT: CHILEAN WOMEN LOSE SUPREME COURT APPEAL

REF: 76 SANTIAGO 10001 (NOTAL)

1. THE CHILEAN SUPREME COURT JANUARY 3 UPHELD A LOWER COURT'S REFUSAL TO ACCEPT HABEAS CORPUS PETITIONS ON BEHALF OF THREE WOMEN REFUSED RE-ENTRY TO CHILE NOVEMBER 23. THE THREE HAD BEEN SEEKING INTERNATIONAL ASSISTANCE TO OBTAIN CLARIFICATION FROM THE GOC OF THE FATE OF HUNDREDS OF MISSING PERSONS.

2. THE LAWYER FOR THE THREE TOLD THE EMBASSY THAT THE FIVE JUSTICES HEARING THE CASE UNANIMOUSLY AGREED TO UPHOLD THE LOWER COURT. ONE OF THE JUDGES RELIED ON A FREQUENT ARGUMENT THAT HABEAS CORPUS IS ONLY AVAILABLE FOR PERSONS PHYSICALLY IN CHILE. THE WHOLE COURT SAID THAT THE GOC'S ACTION HAD NOT VIOLATED CONSTITUTIONAL ACT NO. 3 (CONCERNING RIGHTS AND DUTIES OF CITIZENS). THE DEFENSE HAD CONTENDED THAT THE DECISION TO REFUSE PERMISSION FOR THE WOMEN TO RETURN TO THEIR COUNTRY HAD TO BE DETERMINED BY A COURT. THE JUSTICES FOUND THAT SUCH A DECISION WAS ADMINISTRATIVE AND WITHIN THE PURVIEW OF THE EXECUTIVE.

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FINALLY, THE COURT ACKNOWLEDGED THAT THE EXPULSION MIGHT VIOLATE THE PROVISIONS OF THE 1925 CONSTITUTION BUT OBSERVED THAT A JUNTA EDICT (DL 788) STATES THAT JUNTA DECREES TAKE PRECEDENCE OVER THE 1925 CONSTITUTION.

3. COMMENT: THE DECISION WAS AS PREDICTED. AS FORESEEN BY THE DEFENSE (76 SANTIAGO 10174) THE COURT'S DECISION TO

VOID THE DECREE STRIPPING LEFTIST LABOR LEADER ELGUETA
OF HIS CITIZENSHIP DID NOT PROVIDE A PRECEDENT IN THIS CASE
WHICH WAS BROUGHT ON DIFFERENT TERMS. MOREOVER LOSS OF
NATIONALITY IS PERMANENT. UNDER CHILEAN LAW THE WOMEN
COULD RE-APPLY FOR ADMISSION UNDER A DECREE WHICH WOULD
REQUIRE THEM TO FORESWEAR CRITICIZING THE GOC.
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